HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2)(b)

Description of the Case.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Writ Petition No. 191 of 2004 (S/S)

Prem Singh
S/o Late Sri Kundan Singh
R/o Village Kota (Malla)
Patti Badalpur (Malla)
Tehsil Cousdown
District – Pauri Garhwal .....Petitioner

Versus

Union of India and others ....Respondents

Approved for reporting.

_____

~~Not approved for reporting.~~

Date of Decision 23rd June, 2005.

Initial of Judge.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Writ Petition No. 191 of 2004 (S/S)

Prem Singh
S/o Late Sri Kundan Singh
R/o Village Kota (Malla) Patti Badalpur (Malla)
Tehsil Cousdown
District – Pauri Garhwal …..Petitioner

Versus

1. Union of India,
through its Secretary,
Ministry of Defence, North Block,
New Delhi

2. Chief of the Army Staff Sena Bhawan
New Delhi

3. Controller of Defence Account (Pension)
Allahabad

4. Record Office, Mahar Regiment
Allahabad, through its Record Officer ….Respondents

Sri Raman Kumar Shah, learned counsel for the petitioner.
Sri Pradeep Joshi, learned Standing Counsel (Central Govt.) for the respondents.

Hon'ble B.C. Kandpal, J.

By way of this writ petition, a direction has been sought in the nature of mandamus commanding the respondents to grant disability pension to the petitioner from the date of his discharge from the army in accordance with para 173 of Pension Regulation along with the interest therein.

Brief facts giving rise to this writ petition are that the petitioner was recruited as Sepoy after going through the complete medical examination by the medical authorities of the army on 24.05.1975 and was posted in Mahar Regiment. The petitioner served in Mahar Regiment from 24.07.1975 upto

26.08.1981. He discharged his duties with all sincerity and diligence. He also served in different areas including front area.

It has further been stated in the writ petition that during the employment, there was no disease or stress or any kind of disability to the petitioner and he was medically fit in all respects.

The petitioner was discharged from his duties after serving about more than 6 years on the ground of low category CEE. This disability according to the petitioner was attributed to or aggravated during the military service.

After the discharge from the army, the petitioner submitted his claim for disability pension which was rejected by the respondent no. 4 on the ground that the disability did not occur due to military service. The rejection order has been annexed as annexure 3 to this writ petition.

The petitioner preferred the appeal before the appellate authority and he was vide letter dated 07.06.1997 informed that his appeal has been finally rejected by the Government of India.

The petitioner thereafter made several representations to the authority concerned and vide letter dated 16th November, 2002 he was informed that now nothing can be done as his appeal has been rejected.

The petitioner has thereafter filed this writ petition before this court.

Heard learned counsel for the parties and perused the record.

Counter affidavit has been filed on behalf or respondent nos. 1 to 4. the order passed in the appeal by the Government of India, Ministry of Defence on 19.10.1996 as well as 07.06.1997 are annexed as annexure 7 and 8 to the writ petition which read as under :-

ANNEXURE-VII

No. 7(1013)92/D (Pen-A&AC)
Government of India
Ministry of Defence
New Delhi, the 19th December, 1996

Ex Sep Prem Singh
S/o Shri Kundan Singh
Vill : Kottamalla
P.O : Dudhar Khar
Distt : Pauri Garhwal

Subject : Appeal against rejection of disability pension in respect of Ex Sep Prem Singh (No. 4544719) of Mahar Regt.

1. I am directed to refer to your appeal dated 22.09.90 on the above subject and to inform you that the same has been carefully considered by the first Appeal Committee.

2. You were invalided out of from service on account of Invaliding disease CNS Investigation (Fits).

3. The disability on account of which you were invalided out of service is a constitutional disorder. On perusal of your service/medical documents, the Appellate Medical Authority has found that the on set of Invaliding disease was in June, 78 in peace area. There is no field service in close time relationship to onset of ID. There is no delay in diagnosis and treatment. There was no history of head injury or debilitating illness prior to onset of ID. There is no service aggravating factors. In view of the fact that your disability has been regarded by the Medical Authorities as neither attributable to nor aggravated by duties of Military Service. Your are not entitled to disability pension under the Rules.

4. Hence, therefore, regretted that your request cannot be accepted.

Yours faithfully,

Sd/-

(Dhuri Singh)
(under Secretary to the Government of India)

Copy to :-

1. The Controller of Defence Accounts (Pensions), Allahabad with reference to his Memo. No. G3/816061/XII/92 dated 16.05.93. All service/medical documents are returned herewith their receipt may acknowledged.
2. The Officer-in-Charge Records, Mahar Regt. Saugor (M.P.)
3. DDG(Pens) with reference to his note dated 08.07.96.

ANNEXURE-VIII

Telephone Military : 6054

Mahar Regiment Abhilekh Karyalaya
Records The Mahar Regiment
Saugor (MP) – 470 001

4544719/164/DP

No 4544719 Ex Sep
Prem Singh
VI11& PO : Kandal
Via : Dudhar Khal
Distt : Pauri Garhwal (UP)

APPEAL AGAINST REJECTION OF DISABILITY PENSION

Further to this office letter No. 4544719/162/DP dated 03 May 97.

Your appeal has been rejected by Govt. of India, Ministry of Defence vide their letter No. 7(1013)/92/D (Pen-A&AC) dated Dec 19, 1996 (Copy already fwd to you by Govt of India, Min of Def).

Hence, you are requested not eligible for disability pension

Sd/-
Capt
Record Officer
For Officer-in-Charge Records.

Perusal of the order dated 19th December, 1996 shows that the Officer concerned has not applied his mind and has not

taken into consideration the document referred in annexure-1 to this writ petition which reads as follows:-

ANNEXURE-I

Abhilekh Karyalaya Mahar Regiment
Records The Mahar Regiment
Saugor (M.P.) 47001

4544719/4/DP *04 Jul 1981*

The CDA, (Pensions)
Grants – 3 Section (GP III)
Allahabad (U.P.)

DISABILITY PENSION CLAIM IN RESPECT OF NO. 4544719 EX SEP PREM SINGH

1. Refer to Army Order No. 31/74.

2. The following documents in respect of the above named individual are sent herewith for adjudication of his claim:-

(a)	*Sheet Roll (IAFK – 1155)*	*- One*
(b)	*Enrolment form (IAFK – 1162)*	*- One*
(c)	*AFMSP – 2A*	*- One*
(d)	*IAFF – 958*	*- NIL*
(e)	*IAFF – 3013/AFB – 122-M*	*- One*
(f)	*AFMSP-19 (Original & Duplicate*	*- Two*
(g)	*AFMF-81/IAFM-1231*	*- One*
(h)	*AFMSF – 18*	*- One*
(j)	*IAFY – 2006 (Injury Report)*	*-NIL*
(k)	*Statement of eye witnesses*	*-NIL*
(l)	*Medical Documents for the year 1989, 79, 80, 1981*	
(m)	*Last pay certificate bearing machine No. 605990 of 27/06/81.*	
(n)	*Low Medical Category certificate*	*- NIL*

3. In case any delay is anticipated in adjudication of the claim then, it is requested that pending adjudcation a pending

enquiry award of invalid pension/gratuity be sanctioned under AI 12/S/64 on the assumption that the disability is not attributable to and aggravated by Military Service. In this connection please refer to Government of India, Ministry of Defence letter No. 91949/AG/PS4(a)/101-83-D (Pension / Services) dated 07 Oct 65 and your letter No. Grants/Tech/62-XVII dated 01 Apr 66.

4. Since in this case the qualifying service of the individual is less than 10 years but more than one year on the age of counter signature of ADMS on AFMSP-370 (Invalid gratuity claim) is also sent herewith to enable you to authorize pending enquiry award of invalid gratuity.

5. In accordance with AI 8/S/70 death-cum-retirement gratuity claim in respect of the above named individual alongwith the option certificate is also forwarded herewith for your further necessary action.

6. Please acknowledge receipt.

Sd/-

(J.M. Gomes)
Capt.
Record Officer
For Officer-in-Charge Records

Encls: As stated above.

The counter affidavit has been filed by the respondents which shows that the following averments have been made in paragraph 3 of the counter affidavit :-

3. *That before giving para wise reply of the writ petition the deponent craves leave of this Hon'ble Court to bring to its notice the brief facts of the case which are as follows :-*

(A) That No. 454719 Ex Sep Prem Singh. the petitioner, was enrolled in the army on 10 Jan 1975 and discharged from service being placed in low medical category CEE (P) for principal disability "CNS INVESTIGATION-FITS" under Army rules 13 (3) III (v) on 26 Aug 81 after rendering 06 Years and 224 days qualification service. However, the following amounts have been paid as entitled to him.

a)	*Invalid gratuity*	*Rs. 2135.00*
b)	*DCRG*	*Rs. 1181.00*
c)	*AGI Maturity benefits*	*Rs. 840.00*

B) That Disability pension claim of the petitioner was forwarded to the Pension Sanctioning Authority i.e.; PCDA(P), Allahabad vide Records The Mahar Regiment letter No. 454471/04/DP dated 04 July 1981 but rejected by them in consultation with medical Advisor (Pensions) attached with them vide their letter No. G3/81/606/III dated 19 Aug. 1981 on the following grounds:-

a) The disability is not attributable to military service.

b) Does not fulfil the conditions namely that it existed before aroused during his military service and has been remain aggravated thereby.

A true copy of letter No. 4544719/04/DP dated 04 July 1981 and true copy of letter No. G3/81/6016/III dated 19 Aug. 1981 are bring annexed herewith and marked as annexure C.A. 1 & C.A. 2 respectively to this counter affidavit.

The decision of PCDA (P), Allahabad was communicated to the petitioner vide this office Letter No.

4544719/12/DP dated 11 Sep 81 with an advise to prefer an appeal against the rejection of disability pension to First Appellate Committee, Government of India, Ministry of Defence within a stipulated period of six months i.e.; upto 19 Feb 82 if he was not satisfied with the decision, but the petitioner has not preferred the appeal within stipulated period. A true copy of the letter No. 4544719/12/DP dated 11 September 1981 is being annexed herewith as marked as annexure C.A. 3.

(C) That however, the petitioner had submitted his first appeal on 01 Oct 90 against rejection of disability pension direct to Government of India, Ministry of Defence with a copy endorsed to Records. The Mahar Regiment, Government of India, Ministry of Defence asked PCDA (P), Allahabad vide letter No. 3 (61)/90/D (Pen-A) dated 02 Jan 91 to submit his medical documents along with their audit report to waive the time limit for appeal. His service documents were forwarded to PCDA (P), Allahabad vide Records The Mahar Regiment letter No. 4544719/43/DP dated 12 Jan 91 for onward submission to Government of India, Ministry of Defence to consider his appeal against rejection of disability pension. A true copy of letter No. 3 (61)/90/D (Pen-A) dated 2 Jan 91 and true copy of letter No. 4544719/43/DP dated 12 Jan 91 are being annexed herewith and marked as annexure C.A. 4 & 5 respectively. PCDA (P), Allahabad submitted his appeal along with audit report of Government of India, Ministry of Defence vide their letter No. G3/81/6016XII/92 dated 30 Sep 92. A true copy of this letter No. G3 G3/81/6016/XII/92 dated 30 Sep 92 is being annexed herewith and marked as annexure C.A. 6. His appeal

was examined by Government of India, Ministry of Defence and rejected vide their letter No. 7 (1013)/92/D (Pen A 7AC) dated 19 Dec 96 and true copy of this letter No. 7 (1013)/92/D (Pen A 7AC) dated 19 Dec 96 is being annexed with and marked as annexure C.A. 7. The fact had also been communicated to the petitioner vide Records The Mahar Regiment letter No. 4544719/164/DP dated 07 Jan 97 and true copy of this letter No. 4544719/164/DP dated 07Jan 97 is being annexed with and marked as annexure C.A. 8 to this counter affidavit.

(D) That in accordance with part 173 of Pension Regulations Part 1 (1961), the disability pension is granted to those individuals whose disability is either attributed to or aggravated by military service or both and percentage agreed by medical authority should not be less than 20%. Keeping in view decision has been taken by the pension Sanctioning Authority, PCDA (P), Allahabad."

It appears from the order passed by the Appellate authority from time to time that no application of mind was there on any occasion especially at the point of time when the discharge certificate was issued against the petitioner.

The grant of disability pension to the petitioner is not a bounty and it is just like a pension available to the petitioner. Disability pension is a part of Article 21 of the Constitution of India and as such the petitioner cannot be deprived of his legal right. The petitioner approached the appellate authority for the grant of disability pension but the same has been dismissed without application of mind.

The Hon'ble Apex Court in a matter related to grant of disability pension has ruled in a case reported in *2001 UPLBEC*

347 Mohan Singh Shekhawat Vs. Union of India and others which is quoted as below :

"The grant of disability pension is governed by the various Rules found in Defence Services Regulations.

"Casual leave courts as duty except as provided for in rule 11 (a)"

As per this Rule when an army personnel is on casual leave, same is counter as duty unless he comes under any one of the exceptions under Rule 11 (a) of the Rules. It is not the case of the respondents that the appellant comes under any such exceptions. Therefore, as per Rules 10(a), the appellant was on duty at the time of the accident.

Rule 48 of the said Regulation contemplates admissibility of disability pension. It has enumerated various cases under which an army personnel is entitled to the grant of disability pension.

Rule 48 reads thus:

"Disability pension when admissible. An officer who is retired from military service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section."

In respect of accidents the following rules will be observed:

(a) ……..

(b) ……..

(c) A person is also deemed to be 'on duty' during the period of participation in

recreation, organized or permitted by Service Authorities and of traveling in a body or single under organized arrangements. A person is also considered to be 'on duty' when proceeding to his leave station or returning to duty from his leave station at public expense."

This Rule is a deeming provision which provides for situations under which a person on duty, if he suffers disability, is entitled to the grant of disability pension. The last part of this sub-rule provides that a person incurring disability when proceeding to his leave station or returning to duty from his leave station at public expense is also entitled to the grant of disability pension."

In view of the aforesaid decision, it is quite clear that it is the duty of the court to interpret a provision, specially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule.

Applying to this rule, I am of the opinion that the rule makers did not intend to deprive the army personnel of the benefit of the disability pension solely on the ground that the cost of journey was not borne by the public exchequer.

The **Honble Apex Court** also in a case reported in *2000(3) SLR Page 706 Hari Raj Singh Manu Vs. Union of* India has held as under :-

"*Counsel for the respondents has not been able to show from about documentary evidence that the petitioner was suffering from any disease at the time of his enrolment in the Army. Rather, the facts are that the petitioner started serving*

the Army in the year 1961 and for 20 years, there was no problem with the health of the petitioner. So much so, in the year 1984, the petitioner was placed in SHAPE-1 category. It is only in the year 1986 that the petitioner because a patient of diabetics and hypertension. Thus, it can be safely concluded that the disease suffered by the petitioner was attributed to the military service. The board has assessed the disability of the petitioner at 30% composite and, in these circumstances, the petitioner is entitled to the benefit disability pension.

The **Hon'ble Apex Court** in an another case reported in *2001 (42) ALR 407 Mahavir Singh Rawat Vs. Union of India* and others has also observed as under :

"As a matter of fact, there are a number of decisions of this court which fortify the conclusion that if at the time of acceptance of a person for enrolment in the Army service, he was not found to be suffering from any ailment, and the opinion of the Medical Board is conspicuously missing on the point that the illness leading to the disability could not have been deducted at the time of enrolment by reason of the latent nature of the disease the disability pension to an invalidated employee cannot be denied. A reference may be made to the decision in Gurnam Singh Vs. Union of India 1992 Lab. I.C. 1594 as well as the decisions in Civil Misc. Writ No. 12162 of 1991 Sardar Singh Vs. Union of India; Gurdas Singh Vs. Union of India 1994 C.A.B.L.C. 217 Jagdamba Prasad Dubey Vs. Union of India and others – Civil Misc. Writ Petition No. 22139 of 1990 decided on 26.09.1995 and Ram Niwas Vs. Union of India and others 197 (1) E.S.C. 477 (Alld). There is also a recent celebrated decision of Karnataka High Court in the case of M.K. Joseph Vs. Union of India and others 1999 (1) E.S.C. 675 (Karnataka). The gamut of all these decisions is that the disability pension cannot be refused merely on the ground that

the impaired physical capacity or illness is not attributable to military service. If there is a finding that the disability is attributable to military service, the petitioner was entitled to grant of disability pension as contemplated under the rules. It is well settled proposition of law that award of pension is not a bounty from the employer or an act of charity. It is the indefeasible right of the employee who has earned the privilege by reason of his having been disabled while in service. In my view, the claim of the petitioner for disability pension has been rejected in an arbitrary and capricious manner. According to the rules, the petitioner is entitled to disability pension."

The similar view has been taken by the Allahabad High Court in Civil Misc. Writ Petition No. 9976 of 1990 wherein it has been held that "if a person is discharged after 8 years from army on the ground of disability and at the time of joining his service, he was hale and hearty, he is entitle for disability pension."

In the instant case, the petitioner was discharged from the army on 26.08.1981, he has filed his appeal and the same was dismissed. Thereafter he approached to authorities concerned and finally he received a letter dated 16.11.2002 from his regiment record office, i.e., respondent no. 4 that his appeal has also been dismissed and nothing can be done now. Therefore, he filed the writ petition before this court.

Learned counsel for the respondents has vehemently argued that the appeal of the petitioner was dismissed in the year 1996 and he filed this writ petition after a lapse of about 8 years.

I do not find any force in the argument advanced by the learned counsel for the respondents. The benefit of disability pension is a civil right and it is not a grace which is shown by the respondents authority. It furnishes a successive cause of

action to the petitioner, therefore, the petitioner is entitled to take benefit of disability pension for which he is entitled.

In the result, the writ petition is allowed. The impugned order rejecting the claim of the petitioner for disability pension by the competent authority as well as dismissing the appeal of the petitioner is hereby quashed and a writ of mandamus is issued by commanding respondent to consider, decide and grant disability pension to the petitioner as is admissible to him in accordance with the law within a period of three months from the date of production of certified copy of this order before the concerned authority.

(B.C. Kandpal, J.)

23rd June, 2005
Shiv